

and the religious/political groups across the border in Pakistan who claim to represent them. A great deal of Western aid flows through the Pakistan-based groups, which apparently let very little reach combatants in Afghanistan not under their control. "We are facing three misfortunes," one tribal leader told the *New York Times* last year, "the Russians, the Pakistanis and these political parties." Anti-Soviet activities in Afghanistan have reportedly been halted for

weeks at a time when groups, the Hezbi I other. The Hezbi I unify the resistance. withdrawal from Afghanistan would be followed by civil war.

*Continued in the next issue of First Principles (Vol. 7, No. 4.)*

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## The Executive Order on Intelligence Activities

[Editor's Note: The following is a reprint of testimony given by John H.F. Shattuck, Jerry J. Berman and Morton H. Halperin before the Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary of the House of Representatives. The testimony was given on December 15, 1981.]

The Executive Order on Intelligence Activities (E.O. 12333) signed by President Reagan on December 8, represents a grave threat to civil liberties. Against an overwhelming record of civil liberties abuses by the CIA, the FBI, the NSA and other intelligence agencies, exhaustively documented by responsible committees of both the House and the Senate,<sup>1</sup> President Reagan's order represents an exercise in Orwellian doublespeak. While the Order asserts that its "procedures shall protect constitutional and other legal rights," the procedures in E.O. 12333 authorize a wide-ranging assault on civil liberties. In this respect it is similar to the executive orders which have governed the activities of American intelligence agencies since 1976, when President Ford issued E.O. 11905.

The Reagan order goes beyond the Carter and Ford executive orders and expands the already expansive executive assertion of authority to conduct intelligence activities. Before describing this expansion, however, we would like to summarize the common dangers that all three orders pose to civil liberties:

1. Intrusive surveillance of Americans both at home and abroad, using such techniques as physical surveillance, informants, confidential third party records and pretext interviews is permitted in many circumstances even though they are neither suspected of breaking the law nor of acting on behalf of a foreign power.
2. The Orders permit the infiltration of domestic political organizations in a wide variety of circumstances.
3. The Orders permit the Attorney General to authorize secret searches of homes and other physical searches, including opening first class mail in the United States as well as electronic surveillance and physical searches abroad

without a judicial warrant or a finding of probable cause that the individual is engaged in illegal activity.

4. The Orders are to be implemented by agency regulations which may be kept secret. Moreover, the Order itself may be altered by the President without prior debate or any explanation of the newly asserted powers.

5. The Orders contain no standards for the conduct of surveillance by the FBI (except for the use of Fourth Amendment techniques). These are left to Attorney General guidelines, which are secret.

6. The Orders permit the CIA to operate within the United States and to conduct surveillance of Americans.

But the Reagan Order goes even further. The key changes relate to CIA foreign intelligence investigations at home, CIA physical surveillance of Americans abroad, CIA covert operations at home, opening of mail in the United States, and cooperation with local law enforcement agencies. We discuss them in turn.

### Foreign Intelligence Collection in the United States

Neither the Carter nor the Reagan Order establish any standard limiting the collection of foreign intelligence information abroad or counterintelligence information at home or abroad. Thus, except for limits on the use of specific techniques, both orders permit the CIA to clandestinely gather information from unwitting Americans in the United States as well as abroad in the course of a lawful foreign intelligence investigation, and inside the U.S. in the course of a lawful counterintelligence or counterterrorist investigation. Each order establishes a standard for CIA foreign intelligence investigations. *The standard of the Reagan Order permits an expansion of that surveillance and raises serious concerns.*

The Carter Order permitted the clandestine collection by the CIA of foreign intelligence information in the United States in two circumstances:

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